

November 18, 1958

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Mr. James J. Barry
Commissioner, Welfare Department
State House Annex
Concord, New Hampshire

Dear Mr. Barry:

This is in reply to your letter of November 13, 1958 in which you request our opinion as to whether or not bastardy proceedings may legally be instituted against a seventeen year old boy who is claimed to be the father of a child born out of wedlock.

You state that the mother of the child has been advised by the county solicitor that she cannot legally proceed against the seventeen year old boy. You further advise that the child was born prematurely and will be hospitalized for some time at considerable expense for which you deem the putative father to be responsible.

Our statutory law with respect to maintenance of bastard children is set forth in RSA 168, and RSA 168:1 (supp) provides that a bastardy complaint and warrant may issue against "... any man charging him with having begotten the child ...". We construe this broad language to mean that bastardy proceedings may be instituted against those who are legally infants as well as against adults. Had the Legislature intended this chapter to operate only against men of full age it would have been a simple matter for it to have inserted appropriate words clearly manifesting such intent.

Although we were unable to find any New Hampshire case directly in point, we did find a good statement of the general law on the subject in 10 C.J.S. Bastards, Sec. 53 as follows:

"The putative father may be liable in bastardy proceedings for the support and maintenance of his child even though he is a minor particularly where he has been emancipated from parental authority since the birth of the child."

In considering your question we have not ignored the provisions of RSA 169 commonly known as the Juvenile Law relating to neglected and delinquent children below the age of eighteen years. We do not believe, however, that the protective features of this chapter were intended to apply to civil as distinct from criminal proceedings against juveniles, and it has been

C O P Y

Mr. James J. Barry

-2-

11/18/58

repeatedly held in this State that although some of the forms and procedures are of a criminal character, a bastardy proceeding is in substance a civil suit. See Marston v. Jenness, 11 N.H. 156, and other cases cited and annotated under RSA 168:1.

In closing we consider it necessary to observe that in this particular case there may be factual considerations which make it impractical to proceed against the boy involved, and possibly such considerations were the basis of the solicitor's advice to the mother of the child.

Very truly yours,

GTR,Jr/m

George T. Ray, Jr.
Assistant Attorney General